



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 26, 2020

Alexander Abbe
Assistant City Attorney
City of Santa Clara
1500 Warburton Ave
Santa Clara, CA 95050

Re: Your Request for Advice
Our File No. A-20-091

Dear Mr. Abbe:

This letter responds to your request on behalf of Planning Commissioner Sudhanshu Jain for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTIONS

1. Does the Act prohibit Commissioner Jain from participating in discussions and decisions of the Planning Commission related to the proposed Precise Plan for the Downtown focus area, given the proximity of his primary residence to the focus area?
2. If elected to City Council, would the Act prohibit Commissioner Jain from participating in discussions and decisions related to the proposed Precise Plan for the Downtown focus area, given the proximity of his primary residence to the focus area?
3. If Commissioner Jain is precluded from participating in either of the above circumstances, may he appear as a member of the public during the public hearings on the project?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSIONS

1. Yes. It is reasonably foreseeable the decisions concerning the proposed Precise Plan for the Downtown focus area will have a material financial effect on the market value of Commissioner Jain's residence under Regulation 18702.2(a)(8), due to the proposed sizable changes in the density and type of use in the Downtown focus area.

2. We must decline to answer hypothetical questions. (See Regulation 18329(b)(6)(F).) Should Commissioner Jain be elected to the City Council he should seek further advice at that time.²

3. As explained in further detail below, the Act permits limited participation, including an appearance by the official as a member of the general public before an agency in its regular decision-making capacity if the appearance is on matters related solely to the official's personal interests, and appearances before agencies not subject to the control of the Planning Commission.

FACTS AS PRESENTED BY REQUESTER

The City is in the process of drafting a Precise Plan for the "Downtown Focus Area" of Santa Clara. The Focus Area spans a twenty-five-acre, ten block area, two blocks of which comprise the Franklin Square outdoor shopping mall, and eight blocks of which were previously consolidated under the Federal "Urban Renewal Program" in the 1960s.

This "Renewal" program primarily resulted in the demolition of most of the City's downtown core, and the 1960s promise of a "new downtown" was never realized. As a result, residents of the area have been waiting for the revitalization of this area for more than 50 years, and so it is particularly important for them to have a representative who can participate in the drafting of a Precise Plan that will provide opportunities to revitalize the area.

The City's 2010-2035 General Plan envisions this area being revitalized to include 129,300 square feet of new commercial uses (e.g. boutique shopping, restaurants), public gathering places and civic venues, 396 new residential units, and a transit loop connection to the Santa Clara Station Area, in order to promote increased multi-modal connectivity, reconnect streets, and increase access to transit to attract residents and visitors.

The objectives for preparation of the Precise Plan are to establish a land use plan, urban design standards, and a policy framework that will guide future development and provide developers and the community with clear direction regarding form, massing, density and streetscape for new development.

Sudhanshu Jain was appointed to the Santa Clara Planning Commission in 2015, and is currently in his second term of office. Planning Commissioners serve the City at large, and are not appointed to represent any specific region of the City. Within the next several months, it is

² While we must decline at this time to provide advice in regard to a potential conflict should Commissioner Jane be elected to the City Counsel, we note that proposed revisions to the Act's public generally rule (Regulation 18703) anticipated to be considered by the Commission at its September 2020 Meeting may affect the analysis.

likely that the Planning Commission will be making a number of recommendations to the City Council, and the City Council will be making several decisions, related to the adoption of the Downtown Precise Plan.

The precise plan area contains 44 parcels, of which 6 contain residential uses. Commissioner Jain and his wife own their primary residence, which is located outside the proposed Precise Plan area, approximately 920 feet from the boundaries. Outside the Precise Plan area, there are 489 residential parcels within 1,000 feet of the Precise Plan boundaries. Citywide, there are a total of 28,009 parcels, of which 19,276 are residential parcels. As such, 2.5% of the residential parcels in the City are located within 1,000 feet of the Precise Plan area.

Commissioner Jain also recently filed papers to run for City Council in November 2020, to represent City Council District 5. Only residents of District 5 would be eligible to vote in the election of the Councilmember of District 5. There are 3,328 residential parcels in the District, and all of the 489 residential parcels within 1,000 feet of the Downtown Precise Plan boundaries are located within District 5. As such, 14.7% of the residential parcels in District 5 are located within 1,000 feet of the Precise Plan area.

If the goals of the downtown Precise Plan are achieved, it will help to revitalize the area and make the downtown a more attractive destination for residents and businesses. In a follow-up email, you provided additional information, including a link to the City's Existing Conditions Report. This document notes that some of the goals include the introduction of a new theater that will serve as an iconic building and symbol for downtown, as well as a central public space that can be used for music and events, and a "Main Street."³ Your original request also notes that the revitalization efforts will potentially affect traffic, parking, and noise levels in the vicinity, although the magnitude of these impacts will not be known until an environmental document has been prepared. There is also a possibility that the revitalization would have an effect on the market value of nearby properties. However, the area surrounding the downtown focus area (within 1,000 feet) predominantly consists of single-family residential uses, and as such, there is a low development potential for the properties immediately outside the precise plan area, which is where Commissioner Jain's property is located.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Section 87100 prohibits a public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. Section 87103 provides that a public official has a "financial interest" in a decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests that is distinguishable from the decision's effect on the public generally.

³ <https://www.santaclaraca.gov/home/showdocument?id=66582>

Section 87103 also describes the interests from which a conflict of interest may arise under the Act. As pertinent to the facts presented and the decision at issue, an official has a potentially disqualifying conflict if the decision will have a reasonably foreseeable and material effect on any interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).) Accordingly, we must analyze the potential effect of the decisions at issue on Commissioner Jain's interest in his residential property.

Where the financial interest is not explicitly involved in a decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).) Commissioner Jain owns real property outside the proposed Precise Plan area boundaries, and his real property is not the subject of the Precise Plan decisions. Under Regulation 18701(b), he will have a financial interest in the Precise Plan decisions if it is a realistic possibility the decisions will have a material financial effect on his real property interest.

Commissioner Jain's home is within 920 feet of the Precise Plan boundary. Regulation 18702.2(a)(8), regarding real property within 500 to 1,000 feet from the property involved in a decision, is the applicable standard. Under Regulation 18702.2(a)(8), a decision's effect on an official's real property interest is material if the decision would change the parcel's market value, development potential, income producing potential, highest and best use, or character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality.

Under the facts presented, the Precise Plan would revitalize the area and make the downtown a more attractive destination for residents and businesses. Some of the goals of the revitalization include the introduction of a new theater that will serve as an iconic building and symbol for downtown, as well as a central public space that can be used for music and events, and a "Main Street." You also note that the revitalization efforts will potentially affect traffic, parking, and noise levels in the vicinity, and the possibility that the revitalization would have an effect on the market value of nearby properties.

Based on these facts, it is reasonably foreseeable that the proposed downtown Precise Plan will have a material financial effect on Commissioner Jain's residence. It is reasonably foreseeable that the increase in density and intensity of use, and the change in types of uses, will impact the market value of Commissioner Jain's home. In past advice we have concluded that projects much smaller in scale involving land not currently in residential use would impact the market value of homes located within the 500 to 1,000 feet distance. (See, e.g., *Chopra* Advice Letter, No. A-18-098 [reasonably foreseeable that construction of 118 new residential dwellings on land utilized as a public park located about 930 feet from residences of two City of Mountain View councilmembers would have a material financial effect on the market value of their homes].) Therefore, decisions concerning amendments to the downtown Precise Plan will have a reasonably foreseeable and material financial effect on Commissioner Jain's real property interest, and he should not take part in the decisions.

Participation as a Member of the Public

As a general matter, Regulation 18704(d)(2)(A) permits an appearance by the official as a member of the general public before an agency in its regular decision-making capacity if the

appearance is on matters related solely to the official's personal interests in real property owned entirely by the official, members of his or her immediate family, or the official and members of his or her immediate family. However, this is a narrow exception and allows only for public comments regarding the implications of the decisions on an official's interest. The exception does not allow presentations of a general nature where the official has a conflict of interest regarding the decision.

Influencing a Governmental Decision

As noted above, the Act's conflict-of-interest rules also prohibit a public official using his or her official position to influence a governmental decision in which the official has a financial interest. Regulation 18704(c) provides two rules as to whether a public official uses or attempts to use his or her official position to influence a governmental decision. (Regulation 18704(c).)

“Using Official Position to Attempt to Influence a Decision. A public official uses his or her official position to influence a governmental decision if he or she:

“(1) Contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or

“(2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.”

Consequently, unless permitted as an appearance to represent his own personal interest under Regulation 18704(d)(2)(A), Commissioner Jain is prohibited from any contacts with or appearance before any member, officer, employee, or consultant of his agency or any agency subject to the authority or budgetary control of his agency. This applies to contacts with any members of the Planning Commission or Planning Commission staff. The prohibition also includes any city staff assigned to the project if the project may still come before the Planning Commission. (See *Fulhurst* Advice Letter, No. I-12-045.)

However, under Regulation 18704(c)(2), Commissioner Jain is not prohibited from contacting members of another agency so long as he does not act or purport to act within his authority or on behalf of the Planning Commission in making a contact with any other agency. The City Council falls under Regulation 18704(c)(2), set forth above. Thus, so long as Commissioner Jain does not act or purport to act on behalf of, or as the representative of, the Planning Commission, he would be able to attend and participate in the meetings held by the City Council on matters where the Planning Commission has already acted.

Disqualification and Section 87105.

When a public official who holds an office specified in Section 87200 (including a planning commissioner) has a conflict of interest in a decision noticed at a public meeting, he or she must: (1) immediately prior to the discussion of the item, orally identify each type of interest involved in

the decision as well as details of the interest on the record of the meeting; (2) recuse himself or herself, and (3) leave the room for the duration of the discussion and/or vote on the item. (Section 87105; Regulation 18707.).

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton Senior
Senior Counsel, Legal Division

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